IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1976 OF 2005

S. Dhananjay ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

.....

Mr. Mangesh M.D.Patel, counsel for Petitioner

Mr. A.H. Palekar, A.G.P. for Respondent No.1.

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CORAM: B. H. MARLAPALLE, J.

DATED: 30TH MARCH, 2005

P. C.:-

1. Heard Mr. Mangesh Patel, the learned counsel for the petitioner.

2. The petitioner claims that he had taken on lease plot No. 27 admeasuring 840 Sq. Ft. located in the M.I.D.C. (T.T.C.) area of village Digha, Post Airoli adjacent to the Thane Belapur Road, Navi Mumbai, from the respondent Nos. 6 and 7 alongwith the moveable assets such as machinery, spare, tools, consumables, electricals, motors and fittings etc. for a compensation of Rs.25,000/- as per the lease agreement dated 6.5.2000 and the same property was sought to be attached by the respondent No.3 pursuant to the execution proceedings emanated from the

recovery order passed U/sec. 101 of the Maharashtra Co-operative Societies Act, 1960 (for short "the Said Act") at the instance of the respondent No.2 Bank.

3. The petitioner filed a Revision Application before the Divisional Joint Registrar, Co-operative Societies against the order of attachment and same has been disposed of on the grounds that the petitioner failed to deposit 50% amount under the recovery as required U/sec. 154-2A of the said Act and hence, this petition.

4. There is no dispute that the respondent Nos. 6 and 7 are the borrowers of respondent No.2 Bank and recovery certificate was issued against them U/sec. 101 of the said Act on 20.1.2003 by the respondent No.3. It appears that the respondent Nos. 5 to 7 are the proprietors of a firm called M/s. Kaveri Engineering Industries and the respondent No.2 Bank had claimed recovery of an amount of Rs.23,97,092/- with interest at the rate of 18% per annum.

5. The petitioner filed Regular Civil Suit No. 186 of 2003 and impleaded the respondent Nos. 3 to 8 as defendants and challenged the power of the Special Recovery Officer in taking possession of the property which he had taken on lease from the respondent Nos. 5 to 7. He had also filed an application for

temporary injunction in the said suit. Having failed to obtain an order of temporary injunction he had instituted the proceedings U/sec. 154 of the Said Act before the Divisional Joint Registrar.

6. The learned counsel for the petitioner submitted that the petitioner is an alien to the loan transaction and the execution proceedings for the recovery ordered against the respondent Nos. 5 to 7 could not be proceeded by attachment of property which he had taken on lease from them. Whether the said property is duly and legally transferred to the petitioner is a subject matter which could be gone into in the pending suit and as at present the claim made by the Bank for recovery of its dues cannot be defeated unless the petitioner was successful in obtaining the order of temporary injunction. If he desired that his revision application required adjudication on merits, it was necessary for him to comply with the requirements of sub-Section 2A of Section 154 of the Said Act. The execution proceedings which resulted in attachment of the subject property emanated from the recovery certificate passed U/sec. 101 of the Said Act and therefore, no fault could be found with the order passed by the Divisional Joint Registrar in insisting for the compliance of requirements viz. to deposit 50% of the recovery amount. Hence, the petition

fails and the same is hereby rejected summarily.

7. However, if the petitioner complies with the requirements of sub-Section 2A of Section 154 of the said Act within a period of four weeks from today, it is directed that the Divisional Joint Registrar, Co-operative Societies, will restore the revision application and hear and decide the same as per law.